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Public Prosecutor v Ina

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HIGH COURT (SHAH ALAM) — CRIMINAL APPLICATION FOR
REVISION NO 43–10 OF 2009
YEOH WEE SIAM JC
24 MARCH 2009

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Criminal Procedure — Revision — Revisionary power of High Court — Revision on accused wrongly admitting offence under Immigration Act 1959/1963 due to enforcement blunder by immigration authorities — Whether clear case of miscarriage of justice — Courts of Judicature Act 1964 ss 31, 35 & 36 — Criminal Procedure Code ss 323, 324, 325, 326 & 327

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The respondent was charged under s 6(1)(c) of the Immigration Act 1959/1963 ('the Act') for entering Malaysia, as an Indonesian national, without a valid pass lawfully issued to her to enter Malaysia, and that therefore, she had committed an offence under s 6(3) of the Act. Even though the respondent's family had compounded the case on the day before at the sessions court on 17 March 2009 when the charge was read, explained to and understood by her, the respondent decided to plead guilty on the charge after understanding the nature and consequences of her plea. The sessions court then sentenced her to ten months' imprisonment with effect from the date of arrest. When the deputy public prosecutor was referred to the matter, she immediately wrote to the High Court and applied for revision of the decision of the sessions court.

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Held, acquitting and discharging the respondent:

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- (1) The powers of the High Court for revision in respect of criminal proceedings and matters in the subordinate courts are provided in ss 31, 35 and 36 of the Courts of Judicature Act 1964. Similar powers of revision are also provided in ss 323–327 of Chapter XXXI of the Criminal Procedure Code (see para 17).
- (2) This was a clear case of miscarriage of justice. The respondent's family had already paid the compound sum of RM2,000 on 16 March 2009 and therefore there should have been no further prosecution of the respondent on the same matter. Moreover, it was later found that the respondent owned a valid Indonesian passport. However, due to some enforcement blunder by the immigration authorities, the respondent was charged under the Act in the sessions court (see para 19).

[Bahasa Malaysia summary]

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Responden dituduh di bawah s 6(1)(c) Akta Imigresen 1959/1963 ('Akta') kerana memasuki Malaysia, sebagai rakyat Indonesia, tanpa pas sah yang dikeluarkan kepadanya untuk memasuki Malaysia, dan oleh itu, dia telah melakukan kesalahan di bawah s 6(3) Akta yang sama. Walaupun keluarga responden telah membayar kompaun kes tersebut pada hari sebelumnya di mahkamah sesyen pada 17 Mac 2009, bila tuduhan dibacakan dan diterangkan, dan difahami olehnya, responden memutuskan untuk mengaku salah atas tuduhan selepas memahami sifat dan akibat akuan tersebut. Mahkamah sesyen kemudiannya menjatuhkan hukuman sepuluh bulan penjara bermula daripada tarikh penangkapan. Apabila TPR dirujuk mengenai perkara ini, dia menulis kepada Mahkamah Tinggi dan memohon semakan keputusan mahkamah sesyen.

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Diputuskan, membebaskan dan melepaskan responden:

- (1) Kuasa Mahkamah Tinggi untuk semakan berkenaan prosiding jenayah dan perkara-perkara dalam mahkamah rendah diperuntukkan dalam ss 31, 35 dan 36 Akta Mahkamah Kehakiman 1964. Kuasa semakan yang sama juga diperuntukkan dalam ss 323–327 Bab XXXI Kanun Prosedur Jenayah (lihat perenggan 17).
- (2) Jelas bahawa ini merupakan salah laksana keadilan. Keluarga responden telahpun membayar kompaun sebanyak RM2,000 pada 16 Mac 2009 dan oleh itu, sepatutnya tiada pendakwaan lanjut terhadap responden atas perkara yang sama. Lebih-lebih lagi, kemudiannya didapati bahawa responden memiliki pasport Indonesia yang sah. Walau bagaimanapun, disebabkan kesilapan penguatkuasaan oleh pihak berkuasa imigresen, responden dituduh di bawah Akta di mahkamah sesyen (lihat perenggan 19).]

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Notes

For cases on revisionary power of High Court, see 5(2) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 3172–3190.

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Legislation referred to

Courts of Judicature Act 1964 ss 31, 35, 36
Criminal Procedure Code (Act 593) ss 323, 324, 325, 326, 327
Immigration Act 1959/1963 s 6(1)(c), (3)

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*Nor Amalina bt Ismail (Deputy Public Prosecutor, Attorney General's Chambers)
for the applicant.
Respondent in person*

A **Yeoh Wee Siam JC:**

- B** [1] The High Court in Malaya in Shah Alam (Criminal Division) but sitting in Petaling Jaya ('the PJ High Court') was established on 4 March 2009 at the Kompleks Mahkamah Petaling Jaya as the seventh Criminal Court. It holds the official designation of 'Mahkamah Tinggi (Bahagian Jenayah) Shah Alam (Petaling Jaya)'.
- C** [2] The current administrative policy is that all criminal trial cases in the State of Selangor Darul Ehsan ('Selangor') have to be registered in the Shah Alam High Court before such cases are distributed amongst the six Shah Alam High Courts (Criminal Division) and the PJ High Court.
- D** [3] However, all criminal appeals from the magistrates and sessions courts ('the subordinate courts') in Petaling Jaya have to be filed and registered with the registry of the PJ High Court.
- E** [4] In respect of applications for the revision of all criminal proceedings and matters of the subordinate courts in the whole of Selangor, such applications have to be made to and registered with the registry of the PJ High Court.
- F** [5] This application is the first criminal application for revision made to and registered with the PJ High Court ('the court'). It was received by the court on 20 March 2009 vide a letter of the deputy public prosecutor ('DPP'), Unit Jenayah Am dan Jenayah Seksual of the prosecution division of the attorney general's chambers, Malaysia.
- G** [6] The application was heard by the court on 24 March 2009.
- [7] Briefly, the facts as disclosed by the DPP based on information given by the immigration department, Malaysia, are as follows:
- H** [8] Ina, the respondent in this case, was arrested on 23 February 2009.
- [9] On 16 March 2009, the respondent's family paid the compound sum of RM2,000 under receipt No AP210705.
- I** [10] Subsequent checks revealed that the respondent owns a valid Republic of Indonesia ('Indonesia') passport No A690875.

[11] Unfortunately, on 17 March 2009, the respondent was brought before the immigration court ie the Sessions Court in Semenyih, Selangor ('the sessions court') and charged as follows:

BAHAWA KAMU pada 23 Februari 2009 jam lebih kurang 1145 beralamat di Menara TM, Jalan Pantai Bahru, di dalam daerah Brickfields daiam Wilayah Persekutuan Kuala Lumpur sebagai seorang warganegara Indonesia didapati tidak memiliki suatu pas yang sah yang dikeluarkan kepada kamu untuk masuk ke negara ini. Oleh itu kamu telah melanggar peruntukan di bawah seksyen 6(1)(c) Akta Imigresen 1959/63 (Pindaan 2002) dan telah melakukan suatu kesalahan yang boleh dihukum di bawah Seksyen 6(3) Akta yang sama.

[12] In a nutshell, the respondent was charged under s 6(1)(c) of the Immigration Act 1959/1963 ('the Act') for entering Malaysia, as an Indonesian national, without a valid pass lawfully issued to her to enter Malaysia, and therefore she has committed an offence under s 6(3) of the same Act.

[13] Even though the respondent's family had compounded the case on the day before at the sessions court on 17 March 2009, when the charge was read and explained to, and understood by her, the respondent decided to plead guilty on the charge after understanding the nature and consequences of her plea. The sessions court then sentenced her to ten months' imprisonment with effect from the date of arrest.

[14] When the DPP was referred the matter, she immediately wrote to this court and applied for revision of the decision of the sessions court.

[15] On 24 March 2009, I received the record of proceedings which I had earlier called for, for the purpose of satisfying myself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of the sessions court.

[16] During the hearing before this court on 24 March 2004, the DPP informed the court of the foregoing facts and applied for the decision of the sessions court to be set aside.

[17] The powers of the High Court for revision in respect of criminal proceedings and matters in the subordinate courts are provided in ss 31, 35 and 36 of the Courts of Judicature Act 1964. Similar powers of revision are also provided in ss 323–327 of Chapter XXXI of the Criminal Procedure Code (Act 593) as follows:

- A** 323 Powers to call for records of subordinate Courts
- (1) A Judge may call for and examine the record of any proceeding before any subordinate Criminal Court for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of that subordinate Court.
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- 324 Power to order further inquiry
- C** (1) On examining any record under section 323 or otherwise, a Judge may direct the Magistrate to make, and the Magistrate shall make, further inquiry into any complaint which has been dismissed under section 135, or into the case of any accused person who has been discharged.
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- 325 Powers of Judge on revision
- (1) A Judge may, in any case the record of the proceedings of which has been called for by himself or which otherwise comes to his knowledge, in his discretion, exercise any of the powers conferred by sections 311, 315, 316 and 317 of this Code.
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- (2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard, either personally or by advocate, in his own defence
- F**
- (3) Nothing in this section shall be deemed to authorise a Judge to convert a finding of acquittal into one of conviction.
- 326 Permission for parties to appear
- G** No party has any right to be heard, either personally or by advocate, before a Judge when exercising his powers of revision:
- Provided that the Judge may, if he thinks fit, when exercising such powers hear any party, either personally or by advocate, and that nothing in this section shall be deemed to affect subsection 325(2).
- H**
- 327 Orders on revision
- I** When a case is revised under this Chapter by a Judge he shall certify his decision or order to the Court by which the finding, sentence or order revised was recorded or passed stating, where the finding, sentence or order has been varied, the grounds for such variation; and the Court to which the decision or order is so certified shall then make such orders as are conformable to the decision so certified and, if necessary, the record shall be amended in accordance therewith.

[18] Puan Nor Amalina bt Ismail, the DPP, appeared on behalf of the public prosecutor as the applicant. The respondent was present in court but she was not represented by any legal counsel.

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[19] From the facts, this is a clear case of miscarriage of justice. In the first place, the respondent's family has already paid the compound sum of RM2,000 on 16 March 2009 and therefore there should be no further prosecution of the respondent on the same matter. Moreover, it was later found out that the respondent owns a valid Indonesian passport. However, due to some enforcement blunder by the immigration authorities, the respondent went from the frying pan into the fire when she was charged under the Act in the sessions court on 17 March 2009 and sentenced to ten months' imprisonment.

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[20] This court fully agrees with the DPP that the decision or order of the sessions court must be set aside.

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[21] In exercise of the powers on revision conferred by the above provisions of the Courts of Judicature Act 1964, the Criminal Procedure Code (Act 593), this court, on being satisfied regarding the incorrectness or impropriety of the proceedings in the sessions court and the consequential decision made, deemed it appropriate to set aside the decision of the sessions court and ordered that the respondent be acquitted and discharged immediately.

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Respondent acquitted and discharged.

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Reported by Kanesh Sundrum

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